

**REMARKS**

Applicants confirm the provisional election without traverse of the invention of group II, claims 36-42 and 56-67.

**Double Patenting**

Claims 36-42, 56-59 and 60-67 were rejected on the grounds of double patenting. Of those claims, claims 36, 56, 60 and 65 are independent. These claims are amended in this Office Action such that they are patentably distinct from the identified corresponding claims in co-pending U.S. Patent Application Serial No. 09/924,556. Further, those corresponding claims in co-pending U.S. Patent Application Serial No. 09/924,556 have been amended as well.

The Examiner is handling both this patent application and U.S. Patent Application Serial No. 09/924,556, so that the Examiner can verify these changes to co-pending U.S. Patent Application Serial No. 09/924,556. Further, this Response to Office Action is filed on the same day as the Response to Office Action in U.S. Patent Application Serial No. 09/924,556 in order to facilitate examination of both. Due to the amendment of claims in this patent application and in co-pending U.S. Patent Application Serial No. 09/924,556, the claims are now patentably distinct, and withdrawal of the double patenting rejection of claims 36-42 and 56-67 is respectfully requested.

**35 U.S.C. §112**

Claims 47, 48, 52, and 53 were rejected for utilizing the term "translatable." Applicants point out that claims 47, 48, 52, and 53, do not include the term "translatable." This word only appears in claims 38 and 39. Applicants presume that the rejection was directed to those claims. Claims 38 and 39 have been amended to remove that term, for

clarity. However, Applicants do not acquiesce in the rejection of any claim based on use of the term “translatable,” because that term is familiar to one of ordinary skill in the art, and appears in both general-purpose and technical dictionaries. A patentee may be his own lexicographer, but is not required to be one.

**35 U.S.C. §102**

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (emphasis added).

**Claims 36-42**

Claim 36 has been amended to claim an “anastomosis tool for deploying an anastomosis device to connect a graft vessel to a target vessel, the tool comprising: a first tube configured to receive a unitary anastomosis device having a diameter; a second tube concentric with the first tube, the first and second tube movable with respect to one another to deploy the anastomosis device, wherein the diameter of the anastomosis device increases upon deployment; and a side hole in at least one of the first and second tubes configured to allow the graft vessel to pass out of the side of the tube.

In contrast, U.S. Pat. No. 5,833,698 to Hinchliffe et. al. (“Hinchliffe”) neither discloses nor suggests every element of amended claim 36. Instead, Hinchliffe discloses an anastomosis device that decreases in diameter upon deployment. (e.g., figures 25-28; column 11, lines 46-50).

In addition, U.S. Pat. No. 6,024,748 to Manzo (“Manzo”) neither discloses nor suggests every element of amended claim 36. Instead, Manzo discloses a plurality of

individual clips rather than a “unitary anastomosis device.” (e.g., Figures 8-9; column 3, line 3; column 6, lines 12-15; column 9, lines 43-48; column 11, lines 13-16).

Thus, neither cited reference discloses nor suggests each and every element claimed in amended claim 36, and Applicants believe claim 36 is in condition for allowance. Claims 37-42 depend directly or indirectly from claim 36, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

#### Claims 56-59

Claim 56 has been amended to claim “[a]n anastomosis tool for use in connecting an end of a graft vessel to the side of a target vessel, the tool including a substantially rigid vessel penetrating member configured to penetrate the target vessel, wherein the tool is configured to penetrate the target vessel and deliver a one-piece anastomosis device to connect the graft vessel and the target vessel.”

In contrast, U.S. Pat. No. 5,976,178 to Goldsteen et. al. (“Goldsteen”) neither discloses nor suggests every element of amended claim 56. Instead, Goldsteen discloses a collapsible, rather than rigid, tip having a set of struts or other members. (e.g., Figures 15-15g; column 12, lines 15-19; column 14, lines 13-24). This tip does not penetrate the intact tissue of the target vessel. Rather, it receives a guidewire that is poked outward from the lumen of the graft vessel. (e.g., Figures 12, 15, 18-10; column 10, lines 52-54). The tip then moves into and expands the opening created by the guidewire. (e.g., column 13, lines 6-7). Thus, Goldsteen neither discloses nor suggests a rigid vessel penetrating member configured to penetrate the target vessel.

Thus, Goldsteen neither discloses nor suggests each and every element claimed in amended claim 56, and Applicants believe claim 56 is in condition for allowance. Claims 57-59 depend directly or indirectly from claim 56, and are thus believed to be in condition for

allowance as well under MPEP 608.01(n)(III).

Claims 60-64

Claim 60 has been amended to claim “[a] method of performing anastomosis between a graft vessel and a target vessel, the method comprising: receiving an anastomosis device on an anastomosis device applicator having a substantially rigid vessel penetrating member; connecting a graft vessel to the anastomosis device on the anastomosis device applicator; penetrating a target vessel with the vessel penetrating member of the anastomosis device applicator; advancing the anastomosis device into the penetration in the target vessel; and deploying the anastomosis device with the anastomosis device applicator to connect the graft vessel to the target vessel.”

The same discussion applies here as with regard to claims 56-59. Thus, Goldsteen neither discloses nor suggests each and every element claimed in amended claim 60, and Applicants believe claim 60 is in condition for allowance. Claims 61-64 depend directly or indirectly from claim 60, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

Claims 65-67

Claim 65 has been amended to claim “[a] method of performing anastomosis between a graft vessel and a target vessel, the method comprising: receiving a unitary anastomosis device on an anastomosis device applicator including a first tube and a second tube; connecting a graft vessel to the anastomosis device on the anastomosis device applicator with an end of the graft vessel passing out a side hole of at least one of the first and second tubes; and deploying the anastomosis device with the anastomosis device applicator to connect the graft vessel to the target vessel.

The same discussion of Manzo applies here as applied in the discussion of claims 36-42 above. Thus, Manzo neither discloses nor suggests each and every element claimed in amended claim 65, and Applicants believe claim 60 is in condition for allowance. Claims 66-67 depend directly or indirectly from claim 65, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

**REQUEST FOR ALLOWANCE**

Allowance of pending claims 36-42 and 56-67 is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,



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